

REMARKS

Election/Restrictions

Turning now to the Office Action, the Examiner stated that the Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. The Examiner further stated that currently, at least claim 1 is generic.

The Examiner advised the Applicant that a reply to this requirement must include identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. The Examiner further stated that an argument that a claim is allowable or that all claims are generic is considered unresponsive unless accompanied by an election.

The Examiner further stated that upon allowance of a generic claim, applicant will be entitled to consideration of the claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141, and that if claims are added after the election, the Applicant must indicate which are readable upon the elected species.

Additionally, the Examiner stated that should the Applicant traverse on the ground that the species are not patentably distinct, the Applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. The Examiner further stated that in either instance, if the Examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

The Examiner advised the Applicant that a reply to this requirement must include an election of the invention to be examined even though the requirement be traversed.

The Applicant hereby elects Group I, Claims 4, 14, and 23, and withdraws Group II, Claims 5 and 32, without traverse. The election includes Claims 1 through 3, and all claims dependent upon the Claims of Group I, including Claims 15 through 22 and Claims 24 through 31.


Concluding Remarks

The Applicant respectfully submits that in light of the above comments and remarks, all Claims are now in allowable condition. The Applicant thus respectfully requests timely allowance of all of the pending Claims.

In the event the Examiner wishes to discuss any aspect of this response, or believes that a conversation with either Applicant or Applicant's representative would be beneficial the Examiner is encouraged to contact the undersigned at the telephone number indicated below.

The Commissioner is authorized to charge any additional fees which may be required or credit overpayment to deposit account no. 50-2691. In particular, if this response is not timely filed, the Commissioner is authorized to treat this response as including a petition to extend the time period pursuant to 37 CFR 1.136(a) requesting an extension of time of the number of months necessary to make this response timely filed. The petition fee due in connection therewith may be charged to deposit account no. 50-2691.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Cary Tope-McKay', is written over a horizontal line.

Cary Tope-McKay

Registration No. 41,350

Tope-McKay & Associates
23852 Pacific Coast Highway, #311
Malibu, CA 90265
310.589.8158 ph
310.943.2736 fax
cmckay@topemckay.com